

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

LIGHTING EXPRESS
Respondent

Case No.: I-00-11299

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Official Code § 2-1801.01 *et seq.*), and Title 20, Chapter 9 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-11299) served May 7, 2002, the Government charged Respondent Lighting Express with a violation of 20 DCMR 900.1 for allegedly idling the engine of its truck for more than three minutes while parked. The Government alleged that the violation occurred on May 6, 2002 in the 500 block of Penn Street, N.E., and sought a fine of \$500.

Respondent failed to answer the Notice of Infraction within the allotted 20 day time period (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05). Accordingly, on June 28, 2002, this administrative court issued an order finding Respondent in default and subject to a statutory penalty of \$500 in addition to the fine, and requiring the Government to serve a second Notice of Infraction. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

On July 23, 2002, Respondent, through the driver of the vehicle at issue, Homer Rivera, filed an untimely answer and plea of Admit, along with a money order in the amount of \$500. Respondent provided no explanation, however, for the lateness of its answer. Accordingly, on August 26, 2002, this administrative court issued a partial closure order, closing the matter as to Respondent's liability for the admitted violation of § 900.1, but keeping the matter open as to Respondent's failure to pay the statutory penalty. In addition, the August 26th Order permitted Respondent an opportunity to seek within 15 days of the Order a suspension or reduction of the statutory penalty.

On December 3, 2002, Mr. Rivera filed a request for a suspension of the statutory penalty on the grounds that he was unaware of the engine idling regulation and that, due to his being on the road for extended periods of time, he received the Notice of Infraction well after the time for a timely response had elapsed. In light of this explanation, as well as the lack of evidence in the record of a history of noncompliance and Respondent's driver's payment in full of the fine, the Government does not oppose a reduction or suspension in the statutory penalty, although, it notes that it "will not tolerate future delays from Respondent, Lighting Express, for failure to forward infraction notices to drivers in a timely manner."

Based upon the entire record in this matter, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. On July 23, 2002, Respondent, through the driver of the vehicle in violation, Homer Rivera, filed an untimely answer and plea of Admit to the charged violation of 20 DCMR 900.1, and made payment by money order #75940982029 in the amount of \$500 in full satisfaction of

the authorized fine. 16 DCMR 3224.3(aaa), as added by the Motor Vehicle Excessive Idling Fine Increase Amendment Act of 1999, D.C. Law 13-35 (effective October 7, 1999); 46 D.C. Reg. 8699 (October 29, 1999); 46 D.C. Reg. 6017 (July 23, 1999).

2. On August 26, 2002, this administrative court issued a partial closure order, closing the matter as to Respondent's liability for the admitted violation of § 900.1, but keeping the matter open as to Respondent's failure to pay the statutory penalty. In addition, the August 26th Order permitted Respondent an opportunity to seek within 15 days of the Order a suspension or reduction of the statutory penalty. Respondent failed to seek reconsideration within the allotted time.

3. On December 3, 2002, Mr. Rivera filed a request for a suspension of the penalty on the grounds that he was unaware of the requirements of 20 DCMR 900.1, and that due to a driving schedule that can keep him on the road for several weeks at a time, he did not know of the Notice of Infraction until after the allotted time for a timely response had elapsed.

4. In light of Respondent's driver's explanation, as well as the lack of evidence in the record of a history of noncompliance and Respondent's driver's payment in full of the fine, the Government does not oppose a reduction or suspension in the statutory penalty.

III. Conclusions of Law

1. The Civil Infractions Act requires a respondent to show "good cause" for failing to answer a Notice of Infraction within the time allowed by the statute. D.C. Official Code §§ 2-1802.02(f) and 2-1802.05. If a respondent cannot make such a showing, the statute requires that

a penalty equal to the amount of the authorized fine be imposed. D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(A).

2. Respondent has requested a suspension of that statutory penalty based on its driver's ignorance of the requirements of 20 DCMR § 900.1 as well as its driver's schedule. As to the first point, ignorance of the District's engine idling law does not absolve a respondent of liability, either for failing to comply with the law itself, or for failing to timely answer the Government's charge to that effect as required by the Civil Infractions Act. "Persons conducting business in the District of Columbia are expected to be aware of, and to comply with, laws regulating their business." *DOH v. VIP Adventures Seniors Unlimited, Inc.*, OAH No. I-00-11215 at 2 (Final Order, June 5, 2002), *citing DOH v. Bigbee Steel and Tank Co.*, OAH No. I-00-11217 at 3-4 (Final Order, May 16, 2002); *DOH v. Bloch & Guggenheimer, Inc.*, OAH No. I-00-10439 at 3-4 (Final Order, April 18, 2001).

3. Moreover, while this administrative court might appreciate the sometimes sporadic nature of a truck driver's schedule, that, alone, is insufficient to establish good cause for failing to respond timely to official Government notices. Such a determination is particularly salient where, as here, Respondent made an apparent business decision to forward the Notice of Infraction to its driver for a response, even though Respondent itself was properly charged with the violation. *See DOH v. Hawk's Express*, OAH No. I-00-11256 at 3 n.1 (Final Order, May 23, 2002) (noting that requirements of § 900.1 apply to owners as well as operators of vehicles). Having made such a business decision, it is wholly appropriate that Respondent bear the risks associated therewith. *DOH v. Washington Rehabilitation*, OAH No. I-00-20331 at 4 (Final Order, March 12, 2002); *see also DOH v. Stripping Workshop*, OAH No. I-00-20027 at 3-4 (Final Order, February 6, 2001).

4. This administrative court recognizes that, in this case, the risks of Respondent's business decision will probably be borne in full by its employee, Mr. Rivera. In representing that it does not oppose a reduction or suspension of the statutory penalty, the Government has apparently recognized this as well. Despite this seemingly unfair result to Mr. Rivera, it would be more unfair to the citizens of the District of Columbia to allow Respondent's corporate policy of shifting liability to its employees in such instances to override the vital public interest in fostering timely responses to Government correspondence, particularly in a regulated industry such as trucking.¹ *See Bloch & Guggenheimer, supra*, OAH No. I-00-10439 at 3-4.

5. Accordingly, this administrative court concludes that good cause for Respondent's failure to timely answer the Notice of Infraction has not been established in this case, and that the August 26, 2002 imposition of the statutory penalty of \$500 shall be sustained. D.C. Official Code §§ 2-1802.02(f) and 2-1801.04(a)(2)(A). In addition, because Respondent failed to seek timely reconsideration of the August 26, 2002 order imposing the statutory penalty, Respondent will be required to pay all accruing interest at the rate of 1½ % per month, or portion thereof, beginning August 26, 2002. D.C. Official Code § 2-1802.03(i)(1).

¹ Whether Respondent's driver, if required to pay the statutory penalty, can seek some form of compensation from Respondent in a civil matter is, of course, beyond the purview of this administrative court.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this matter, it is, hereby, this ____ day of _____, 2003:

ORDERED, that Respondent will pay the remaining statutory penalty plus accrued interest from August 26, 2002 in the amount of **FIVE HUNDRED THIRTY-SEVEN DOLLARS AND FIFTY CENTS (\$537.50)** pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.03(i)(1), in accordance with the attached instructions within 20 calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if the Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall continue to accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from August 26, 2002, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant

to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ 2/11/03

Mark D. Poindexter
Administrative Judge